



## STATE OF NEW JERSEY

In the Matter of Fatima Beatty,  
Hudson County, Department of  
Health and Human Services

CSC DKT. NO. 2017-3564  
OAL DKT. NO. CSV 07810-17

DECISION  
OF THE  
CIVIL SERVICE COMMISSION

ISSUED: OCTOBER 5, 2018 BW

The appeal of Fatima Beatty, Omnibus Operator, Hudson County, Department of Health and Human Services, 90 working day suspension, on charges, was heard by Administrative Law Judge Kelly J. Kirk, who rendered his initial decision on August 24, 2018. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on October 3, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision to modify the 90 working day suspension to a 60 working day suspension.

Since the penalty has been modified, the appellant is entitled to 30 working days of back pay, benefits, and seniority, pursuant to *N.J.A.C. 4A:2-2.10*. However, the appellant is not entitled to counsel fees. Pursuant to *N.J.A.C. 4A:2-2.12(a)*, the award of counsel fees is appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. March 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained and major discipline was

imposed. Thus, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12(a)*, counsel fees must be denied.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in disciplining the appellant was justified. The Commission therefore modifies the 90 working day suspension to a 60 working day suspension. The Commission further orders that appellant be granted 30 days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay.

Counsel fees are denied pursuant to *N.J.A.C. 4A:2-2.12*.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter should be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3<sup>RD</sup> DAY OF OCTOBER, 2018



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 07810-17

AGENCY DKT. NO. 2017-3564

**IN THE MATTER OF FATIMA W. BEATTY,  
HUDSON COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES—  
MEADOWVIEW PSYCHIATRIC HOSPITAL.**

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**Samuel B. Wenocur, Esq.,** for appellant Fatima W. Beatty (Oxfeld Cohen, attorneys)

**Nidyara Y. Rourk,<sup>1</sup>** Assistant County Counsel, for respondent Hudson County Department of Health and Human Services (Donato J. Battista, Hudson County Counsel, attorney)

Record Closed: June 11, 2018

Decided: August 24, 2018

**BEFORE KELLY J. KIRK, ALJ:**

**STATEMENT OF THE CASE**

The Hudson County (County) Department of Health and Human Services/Meadowview Psychiatric Hospital (Meadowview or hospital) suspended

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<sup>1</sup> Georgina Giordano Pallitto, Assistant County Counsel, appeared at the hearing.

omnibus operator Fatima Beatty for ninety working days for neglect of duty, insubordination, conduct unbecoming a public employee, misuse of public property, and other sufficient cause.

### **PROCEDURAL HISTORY**

On or about February 28, 2017, the County served Beatty with a Preliminary Notice of Disciplinary Action (PNDA), charging her with neglect of duty (x5), incompetency and inefficiency, insubordination (x4), conduct unbecoming a public employee (x7), misuse of public property, and other sufficient cause. (C-1.) A departmental hearing was held on March 28, 2017, and the charges of neglect of duty, insubordination, conduct unbecoming a public employee, misuse of public property, and other sufficient cause were sustained. (J-1.) On or about April 4, 2017, the County served Beatty with a Final Notice of Disciplinary Action (FNDA), suspending her for ninety working days, beginning April 10, 2017, and ending August 17, 2017. (J-1.)

Beatty appealed, and the Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 to the Office of Administrative Law (OAL), where it was filed on June 2, 2017. The hearing was held on April 13, 2018, and the record remained open for post-hearing submissions. The record closed on June 11, 2018.

### **FACTUAL DISCUSSION**

Walt Boraczek, Patricia McCarthy, and Noel Garriga testified on behalf of the County. Fatima Beatty testified on her own behalf.

#### **Background**

I **FIND** the following preliminary **FACTS** in this case:

Beatty began working as an omnibus operator (driver) for the County in 2003. She was initially assigned to the County welfare department, where she drove a bus. On June

15, 2015, she was reassigned to Meadowview, an eighty-four-bed inpatient psychiatric hospital for adults operated by the County. Beatty works Monday through Friday, from 8:30 a.m. to 4:30 p.m. Meadowview had two other drivers: Albert Gunnell, whose shift was 7:00 a.m. to 3:00 p.m., and Francis Torres, whose shift was 7:30 a.m. to 3:30 p.m. There are no drivers at Meadowview scheduled to work before 7:00 a.m. or after 4:30 p.m. Shifts are staggered because sometimes there are early-morning or late-afternoon trips or "runs," and Meadowview tries to always have a driver available. Generally, early runs were assigned to Gunnell and late runs were assigned to Beatty. Meadowview has three twelve-to-fifteen-seat passenger vans for transportation. The Meadowview emblem appears on the front and rear doors of each van. Each driver was assigned a specific van, for which the driver was responsible.

Noel Garriga has been employed at Meadowview as a maintenance supervisor for almost ten years. From November 2016 to March 2017, the transportation-department supervisor was out due to illness, so Garriga was the acting supervisor of the transportation department. Garriga's supervisor was Joanne Reilly.

The main task of the drivers is transporting patients to and from medical appointments, the Social Security office, and group homes. There are also occasions where the drivers drive patients to retail stores, but there would be an order and it would be coordinated with the transportation department. Specifically, the doctor, social-services worker, or therapist requesting transport would complete a transportation form and take it to the transportation office. Garriga would then write the trip on a white board in the transportation office and assign the trip to a specific driver, noting the driver on the white board. Meadowview policy requires that travel first be approved by the patient's psychiatrist, and that the patient be accompanied by a minimum of one hospital attendant. Drivers are not attendants.

Walt Boraczek is employed at Meadowview as a systems analyst. Patricia McCarthy has been employed at Meadowview as a principal account clerk for almost twenty years. Among her responsibilities are handling commitment papers as a liaison between the court and Meadowview.

While employed at the County welfare department, Beatty was previously suspended for three days. While employed at Meadowview, Beatty was previously suspended for twenty days for refusing to make a trip. (C-20.)

### Testimony

#### December 27, 2016, Meadowview-Van Incident

##### *Walt Boraczek*

On December 27, 2016, while on his lunch break, Boraczek saw Beatty at around 1:00 p.m. in the parking lot of Walmart in Secaucus. As he parked his personal vehicle, he noticed a Meadowview van parked approximately ten feet away. He had an unobstructed view of the van and saw Beatty walking toward it carrying several Walmart bags. She loaded the bags into the van and drove off in the direction of Walmart. Boraczek looked for the van again as he walked toward Walmart, but he did not see it. Upon entering Walmart, Boraczek sent a text message to Garriga, asking if there was a patient trip or legitimate business purpose for the Meadowview van to be at Walmart at that time. Garriga advised that there was not, and he requested that Boraczek document what he had observed. Boraczek emailed Garriga on January 5, 2017. (C-2.)

##### *Noel Garriga*

There was no trip to Walmart assigned to Beatty on December 27, 2016. There had been no written request for such trip, and there was no such trip written on the white board. Garriga only became aware that Beatty's van was at Walmart via text from Boraczek, and he asked Boraczek to memorialize the incident in writing. Garriga spoke with Beatty later that day and asked her to tell the truth about whether she had been at Walmart with the Meadowview van. Beatty denied that she had, and asked him why he would ask her that. Garriga emailed Reilly about the incident on December 28, 2016. (C-3.) He received an email from Boraczek on January 5, 2017. (C-2.)

*Fatima Beatty*

Beatty went to Walmart with the Meadowview van that day as a last-minute substitute for Gunnell. She drove a client to Walmart to get some personal items because he was being discharged. Beatty, the client, and an attendant, Anthony Braxton, had gone into Walmart together. After the client purchased his items, he had to wait on a special line to purchase cigarettes. Beatty told the client and Braxton that she would put the items in the van and pull the van in front of Walmart.

Beatty had a conversation with Garriga later that day. Garriga asked if she had driven the Meadowview van to Walmart for personal use during her lunch hour. Beatty told him that she had not, and asked him why would he ask her that. She never denied going to Walmart. She only denied that she had driven to Walmart for personal use, because that was the only question Garriga had asked.

Drivers are not required to assist patients. On trips, Beatty sometimes goes inside and sometimes remains in the van. Braxton might ask her to come in to speed up the process if something needed to be picked up on the other side of the store. Beatty might also leave the van to use a restroom or something of that nature, but nine out of ten times she remains in the van.

January 9, 2017, Snow Incident

*Noel Garriga*

On January 9, 2017, it had snowed, and there was approximately three inches of snow on the vans. It is the responsibility of each driver to remove the snow from his or her assigned van. A snow brush is kept at the back of each van, behind the last seat. Additionally, there is a broom located in the front-entry vestibule of the hospital to reach any high areas. The vans are parked in the rear hospital parking lot at night, and each driver is responsible for moving his or her assigned van to the front of the building. Snow must be removed before the vans are moved to the front of the hospital.



Beatty came to Garriga's office and asked who was responsible for removing snow from the vans. Garriga advised her that it is the driver's responsibility, which Beatty disputed. Garriga obtained a copy of the Civil Service Commission job specification for omnibus driver and provided Beatty with a copy of it. (C-6.) Garriga also contacted Transcend, the County's separate department of drivers, to confirm that it is the driver's responsibility. Even after providing the job description to Beatty she did not remove the snow from the van. Beatty said that she did not have tools or gloves, and she walked toward the van with the patient and the attendant. Garriga told Beatty there was a broom in the vestibule, but Beatty did not make any attempt to remove the snow. The patient, the attendant, and Beatty all got into the van, and Beatty drove away with the snow on the roof and on the windshield, except for where the wipers had cleared it. The view out the front window was still partially obstructed when she drove away.

Garriga checked all three vans after the incident, and there was a snow brush in each van. Gunnell and Torres had each removed the snow from their vans before moving the vans to the front of the hospital. Torres is approximately Beatty's height, possibly a little shorter. Garriga emailed Reilly about the incident on January 9, 2017. (C-5.) Meadowview utilizes closed-circuit-television cameras, which captured this incident. (C-21.)

*Fatima Beatty*

Beatty had never previously worked during a snow storm and no one ever told her she would need to remove snow from the van. When she worked for the welfare department, she drove a twenty-passenger bus that was almost double the size—taller and wider—than her Meadowview van. When it snowed, maintenance personnel removed the snow from the bus. She had never previously removed snow from a County vehicle.

That day, she went into Garriga's office and asked who was responsible for removing snow from the vans. Garriga told her it was the driver's responsibility. She responded that she had never removed snow from a vehicle and did not have gloves, and she checked the van, but there were no tools, such as an ice scraper or brush, in her van.

Garriga made a call, and he also obtained a job description and gave it to her. Garriga never told Beatty to use a broom or the location of a broom. Beatty went to the van, which was preheated, turned on the windshield wipers, and left with the patient and the attendant. Beatty asked Torres how she had cleaned her van, and Torres said she used her personal equipment from her car.

January 17, 2017, Welfare-Division Incident

There was no testimony from any witness relative to this incident, and therefore it is not considered herein.

January 19, 2017, Assignment-Refusal Incident

*Patricia McCarthy*

On January 19, 2017, at approximately 2:00 p.m., McCarthy received a request to deliver a patient's re-commitment papers to a judge. McCarthy completed a civil-commitment order and made copies for the judge, which took approximately ten minutes. McCarthy put the paperwork into an envelope and contacted Garriga to arrange delivery. She spoke to Garriga in person, with Gunnell present, about the delivery because a new court process required that the paperwork be delivered to Superior Court in Jersey City for signature by a Superior Court judge, rather than to municipal court. Since that was the first time delivering the papers to Superior Court, McCarthy did not know how long it would take. She wrote down the names of several Superior Court judges whom the driver could ask for on arrival. Eventually Beatty showed up, and McCarthy explained to Beatty what she had already explained to Garriga and Gunnell. McCarthy handed the envelope to Beatty. McCarthy explained that she did not know whether any judges would be available to sign the papers, so the driver might have to wait. Beatty was not happy about that, and stated, "Oh, what am I going to have to wait there?" Beatty did not seem to want to go. Gunnell volunteered to deliver the papers, so Beatty handed the envelope to Gunnell, and said "Okay, good, you take them then." Beatty was not cooperative in taking the assignment. Beatty did not say that she would not take the assignment, but it seemed

to McCarthy that she was unwilling. Beatty was not yelling and did not use profanity. McCarthy prepared a written statement on February 7, 2017. (C-11.)

*Noel Garriga*

McCarthy requested the run at approximately 2:00 p.m. Garriga reached out to Beatty because it was a late trip. Gunnell's shift ended at 3:00 p.m., so he would have been paid overtime thereafter. When he was going over the trip with Beatty and McCarthy, it was obvious that Beatty did not want to make the run. She was verbally defiant, and was not cooperating or being a team player. Beatty said she did not want to go on a wild-goose chase. Beatty had the papers, but because she was being difficult and uncooperative, Garriga took the papers from her and assigned the trip to Gunnell. Beatty's voice was raised, but she did not say she would not do the trip or refuse to do the trip. A driver is not required to accept a run that would require work beyond his or her scheduled work hours. Overtime or comp time would be offered. Garriga wrote an email to Reilly on January 19, 2017. (C-9.)

*Fatima Beatty*

The assignment was to go to the judge's chambers to get re-commitment papers signed. McCarthy said she did not know which judge to go to because it was a new courthouse and new procedure. Beatty asked McCarthy what she was supposed to do when she arrived at the courthouse, or if she was supposed to just go there and stand around. McCarthy was trying to explain and Beatty was asking questions, like what floor she should go to and whom she would have to see. McCarthy told Beatty she would give her a list of judges. Beatty asked McCarthy if she was sure the judges were there, and then turned to Garriga and advised him that she gets off work at 4:30 p.m. and asked him if she would have time to get back to sign out at 4:30 p.m. so she could pick up her daughter. Her husband is not able to pick up her daughter. McCarthy was talking in a regular tone, but Garriga was getting irritated because Beatty was asking questions. Garriga got irritated and he took the packet out of Beatty's hand and gave it to Gunnell, who said he would make the trip. Beatty never said she would not do the job. She never yelled or used any obscenities.

January 20, 2017, Microwave Incident

*Noel Garriga*

Garriga had a microwave in the transportation office that was left by a prior supervisor. Garriga asked Gunnell to move the microwave to the locker room because it had become an excuse for non-driver employees to hang out in the transportation office. The transportation office is intended for use only by the three drivers and Garriga, and there was no reason for other employees to be in there. The next morning Garriga was advised by Gunnell that Beatty had moved the microwave back into the transportation office. Garriga wrote emails to Reilly on January 19, 2017, and January 20, 2017. (C-9; C-10.)

*Fatima Beatty*

Beatty was not told why the microwave was removed from the transportation office until after she brought it back. Beatty did not check with anyone before moving it back to the transportation office.

January 23, 2017, January 25, 2017, January 26, 2017, January 27, 2017, January 30, 2017, February 3, 2017, and February 21, 2017, Attendance Incidents

*Noel Garriga*

Timesheets are kept on a sign-in table to the right of the hospital entrance. Employees sign in and out for the day and for lunch breaks on the timesheets. At the end of each two-week pay period, Garriga reviews the timesheets and signs off on them. Garriga also notes and initials any exceptions and overtime. Beatty's Bi-Weekly Attendance Sheet reflects that on January 23, 2017, January 25, 2017, and January 26, 2017, she signed out for lunch at 3:30 p.m., and signed in from lunch at 4:30 p.m. However, Beatty left at 3:15 p.m. on January 23, 2017, as observed on the video cameras, and at 3:30 p.m. on January 25, 2017, and January 26, 2017, and never returned

thereafter on any of those days to sign in from lunch or out for the day. (C-12.) On January 23, 2017, Garriga emailed Reilly and advised that Beatty left at 3:15 p.m. without approval when her shift was to end at 4:30 p.m. (C-13.) On January 27, 2017, the timesheet reflects that Beatty signed out for lunch at 3:30 p.m., signed in from lunch at 4:30 p.m., and signed out for the day at 4:30 p.m., but the exceptions reflect Garriga's note that Beatty was approved to do so on that day because she had not been able to take a lunch due to a work trip. Sometimes a trip causes a driver to miss lunch, so the driver contacts Garriga to seek approval, which Garriga would grant, though he does not always physically sign the book after they call in. However, Garriga noted the January 27, 2017, approval on the timesheet that same day, so Beatty would have seen the approval when she signed in on January 30, 2017.

Garriga did not recall if he spoke to Beatty about her unapproved early departures on January 23, 2017, January 25, 2017, and January 26, 2017. On January 30, 2017, Beatty signed out for lunch at 12:30 p.m., signed in from lunch at 1:00 p.m., and signed out for the day at 4:00 p.m. However, cutting her lunch in half and leaving half an hour early was not approved by Garriga. On February 3, 2017, Beatty signed out for lunch at 2:30 p.m., signed in from lunch at 3:30 p.m., and signed out for the day at 3:30 p.m. Leaving an hour early was not approved by Garriga.

Beatty's Bi-Weekly Attendance Sheet reflects that on February 21, 2017, Beatty wrote "no lunch" and "no breaks" and signed out at 4:00 p.m. (C-14.) Garriga noted and initialed in the exceptions that this was not approved. Drivers are supposed to call on their County-issued cell phone if they are going to work through lunch. Not taking a lunch and signing out early or taking lunch at the end of the day must be approved by a supervisor. It defeats the purpose of the staggered schedule to not have a driver on duty after 3:30 p.m. Garriga addressed the early departures with Beatty. Signing in and out for lunch and out for the day at the same time is a falsification of the time sheet. The driver is expected to return to sign out, even if lunch is taken the last hour of the day.

*Fatima Beatty*

She completed her time sheets. Her understanding of when she was supposed to take lunch was that if she was inside the building without any specific runs, drop-offs, or pickups, she was to take lunch between 11:00 a.m. and 2:00 p.m. Meadowview provides a free lunch for everybody from 11:00 a.m. to approximately 2:00 p.m. Once lunch is over, the cafeteria closes. If out on a trip during lunch, it has been past practice that the driver gets lunch on the back end of the day, or the driver could request in writing an hour of comp time.

Beatty either called Garriga or went to his office on January 23, 25, and 26 to request approval to take lunch late because she had no lunch and no breaks, and Garriga approved the requests. She did not see Garriga sign the exceptions on January 27, and he did not speak to her that week or the following about her having taken lunch at 3:30 on January 23, 25, and 26. No one spoke to her about signing out prior to the time listed.

At the end of the day, she usually signs out at 4:15 or 4:30, but does not actually leave the premises. It takes five to ten minutes for her to walk out, drive her van to the rear of the hospital, clean any garbage out of the van, and mark her mileage. Past practice for all drivers was to sign out first and then do final van checks.

January 27, 2017, Uniform Incident

The County provides the drivers with a uniform consisting of a light-blue shirt, dark-blue pants, and a jacket. The shirt and jacket both have the County logo on them. It is required that the uniform be worn daily. Beatty was provided with uniforms—five shirts, five pants, and one jacket. It was an ongoing problem that Beatty did not report to work in uniform. Garriga emailed Reilly on January 27, 2017, about Beatty not wearing a uniform or any clothing identifying her as a County employee. It is important that drivers wear the uniforms to easily identify them, especially when out with patients. For warmer months, a light windbreaker is provided.

*Fatima Beatty*

She received uniforms when she started. However, she was approximately seventy pounds heavier than she is now, so her uniform became too big. So she had to wear her regular clothes for the first two weeks while they ordered her new uniforms. She received the new uniforms in December, but the new pants did not fit properly. She spoke to the office clerk, but was advised that she would have to wait for new pants because orders are only placed at certain times. Beatty purchased her own navy-blue pants in the same color as the uniform. Other drivers also wore their own personal pants.

February 21, 2017, Assignment-Refusal Incident

*Noel Garriga*

On February 21, 2017, at approximately 3:00 p.m., he assigned Beatty a trip to Hoboken to pick up a resident from a group home, but she was defiant and refused to make the trip. There were no other drivers available. The trip was then reassigned to an aide, but the aide did not have a commercial driver license so he could not drive the van, and instead drove a sport-utility vehicle with another attendant to accompany him. Garriga wrote an email to Joanne Reilly about the incident on February 21, 2017. (C-18.) In addition to refusing the trip, Beatty signed out at 4:00 p.m. without approval.

*Fatima Beatty*

Before she started the job she let her interviewers know that she could not work overtime because she has a small child who must be picked up at 5:30 p.m. They advised that overtime was not mandatory. During rush hour it would have been thirty to forty-five minutes to get to Hoboken, and she would have had to pick up the patient and return to the hospital. Additionally, the time for the attendant to assist a patient to the van depends on the patient, and could take five minutes or up to twenty minutes. She did not believe she would have time to pick up her child, so she said it was late and her shift ends at 4:30 p.m. and she could not do overtime. Garriga said he would find someone else to do it and walked away. Beatty walked back to the transportation office. It was then

approximately 3:30 p.m. and she had not gotten lunch or breaks that day due to trips. She sat in the transportation office. She left at 4:00 that day. She spoke to Garriga before she left and advised that she did not get any breaks or lunch, but he just walked away from her.

### **Additional Findings of Fact**

A credibility determination requires an overall evaluation of the testimony in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 555 (1954). It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). "The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

As set forth below, appellant's testimony was inconsistent with and overborne by the record, including the documentary evidence and the concise, consistent, and credible testimony of the County's witnesses.

### **December 27, 2016, Meadowview Van Incident**

#### **Charge:**

On December 27, 2016, [Beatty] was observed utilizing a Hudson County Vehicle not in furtherance of any work related activity. Said Hudson County van was viewed parked in the Walmart Secaucus parking lot during lunch hours. The driver, Beatty was observed approaching the parked van alone and entering the van with multiple Walmart bags. There were no patients or other MPH staff observed to be with Beatty at the time. An email was received from the MPH staff person, [Boraczek], who observed Beatty's acts. Later that day,



supervisor [Garriga] spoke to Beatty regarding the matter. She denied using the County van to conduct personal shopping. This constitutes misuse of Hudson County public property, specifically the MPH transportation van, and is a violation of the County Standards of Conduct.

Beatty does not dispute that she was at Walmart on December 27, 2016, and now claims that it was on an assigned trip. She testified that she had never previously explained to anyone what she was doing at Walmart because she was never specifically asked if she was on a client trip, and had only been asked if she drove the van to Walmart for personal use. However, it is not probable under the circumstances that Beatty, after being questioned about the incident by her supervisor and after disciplinary charges were filed, would not simply have explained that it was an assigned work trip. Further, Beatty presented no evidence of an order or assigned trip, presented no witness, such as Braxton, to corroborate the trip, and she did not recall the client's name, physical description, or the location to which he was discharged. Beatty also testified that she typically remains in the van, and her general demeanor left the impression that she would not likely accept work outside her job description, so it is not credible that she would have been shopping with or carrying bags for a patient. In short, Beatty's testimony was not probable under the circumstances and was overborne by Garriga's testimony that she had not been assigned a trip to Walmart that day and there was no order for such trip.

**I FIND the following FACTS with respect to this incident:**

The County Handbook Standards of Conduct reflect that "No employee should use or allow the use of County property . . . for other than officially-approved activities." (C-4.) Beatty was aware of the prohibition on the use of County property for other than officially-approved activities. Nevertheless, on December 27, 2016, Beatty used the Meadowview van to take a personal trip to Walmart and then was not truthful about the incident with her supervisor. Beatty was not assigned a work trip to Walmart on December 27, 2016.

January 9, 2017, Snow Incident

Charge:

On January 9, 2017, Beatty inquired with Garriga as to who is responsible for cleaning snow off the transportation van. Garriga provided her with a copy of the job description, highlighting pertinent information and reviewing her responsibilities as Omnibus Driver. Beatty disagreed, stating that she did not have tools or gloves. Garriga provided her with a broom which is used for that purpose and kept in the front lobby of the hospital. Beatty continued to refuse to remove the snow from the van assigned to her. This constitutes neglect of duty and insubordination.

Although Garriga testified that State law requires that the van windshield and roof be cleaned, the charges do not stem from any summons or adjudicated statutory violation. Nevertheless, Garriga advised Beatty that she was responsible for cleaning the snow off the van, and provided her with a copy of her job description. That Beatty was not required to clean the much larger bus she drove at the County welfare department is of no moment. Beatty's testimony that there was no snow brush and that Garriga did not tell her about the broom was overborne by Garriga's testimony to the contrary, and by the video showing that the other two drivers had cleaned their vans.

**I FIND the following FACTS with respect to this incident:**

Gunnell and Torres had cleaned the snow off their vans. A snow scraper/brush and broom were available to Beatty to clean the snow off the van. Beatty was advised by her supervisor that she was responsible for cleaning the snow off the van, but she refused to clean the snow off the van. The omnibus-operator definition reflects, "may also clean, service, and make minor repairs to such vehicles; does other related duties as required"; examples of work reflect, "[c]hecks, cleans, and performs minor servicing of vehicles"; and knowledge reflects, "[k]nowledge of State Motor Vehicle regulations" and "[k]nowledge of the care, maintenance, and competent/safe/efficient operation of vehicles, including cleaning, [and] lubricating . . . ." Per Beatty's job description, she is

responsible for cleaning and safe operation of the van, but she refused to clean the snow off the van.

January 19, 2017, Assignment-Refusal Incident  
& January 20, 2017, Microwave Incident

Charge:

On January 19, 2017, Garriga asked a transport worker to remove the microwave from the transportation office and place it in the locker room for all employees to have access. It became apparent that traffic into the transportation office had increased. The same afternoon, at or around 2:00 P.M., a hospital worker asked if Garriga could send a driver over to 595 County Avenue to have commitment papers signed by a judge. Garriga called Beatty and asked her to make the run and she immediately went on a rant about the microwave. Garriga explained that it was his decision to remove microwave. She denied that there is increased traffic in the office, at which point Garriga mentioned that she also hangs out by the security desk and in the kitchen dining area, all of which she denied.

Beatty and Garriga both then met in [McCarthy's] office. Beatty impatiently questioned McCarthy as to who she needs to see to have the papers signed because she did not want to go on a "wild goose chase," at which point Garriga grabbed the envelope back and asked another driver to make the run. McCarthy tried to explain the process to her but Beatty was less than cooperative.

On January 20, 2017, the microwave needed to be removed from the Transportation Office, as Beatty had returned it despite prior direction. This constitutes neglect of duty and insubordination.

The charges reflect that Beatty "went on a rant" about the microwave being removed, and that Garriga had explained his decision to remove it to Beatty, but she disregarded his decision and moved the microwave back to the transportation office. Given the overall lack of credibility, Beatty's testimony that she did not know why the microwave had been removed was not probable under the circumstances, and one would expect that even absent an explanation she should ask her supervisor before moving a

microwave from a locker room to the transportation office. However, there was no testimony in the record about a "rant" or that Garriga had explained his decision to remove it before it was moved back to the transportation office to corroborate the hearsay in the charges and Garriga's email to Reilly about the incident.

Additionally, while Beatty may have seemed unwilling and obviously did not want to make the trip, neither Garriga nor McCarthy testified that Beatty had actually refused to accept the assignment, and not being a "team player" does not amount to assignment refusal.

**I FIND the following FACTS with respect to the assignment-refusal incident:**

A driver is not required to accept a run that would require work beyond his or her scheduled work hours.<sup>2</sup> Beatty did not refuse to take the trip. Beatty did not use profanity or yell.

January 23, 2017, January 25, 2017, January 26, 2017, January 27, 2017, January 30, 2017, February 3, 2017, and February 21, 2017, Attendance Incidents

**Charge:**

On Monday, January 23, 2017, Beatty left MPH early, at 3:15 P.M., without prior approval from her supervisor. Her work schedule is Monday through Friday, 8:30 A.M. to 4:30 P.M. Beatty signed out of work at 3:30 P.M., but is viewed on the surveillance leaving at 3:15 P.M. She wrote on her timesheet that she took her lunch break from 3:30 P.M. to 4:30 P.M. This is not her assigned lunch period, nor did she receive permission to change her lunchbreak to the end of her shift, creating an early dismissal. Beatty repeated the same unauthorized alteration of her schedule on January 25, January 26, January 27, January 30, February 3, and February 21, 2017. This is a violation of MPH and County Policy on Standards of Conduct: Attendance and Punctuality. Thus, constitutes falsification of time sheets, theft of services and neglect of duty.

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<sup>2</sup> It was not established whether the trip would have required that Beatty work beyond 4:30 p.m.

It is evident that Beatty was signing out for lunch at 3:30 p.m. and not returning to the hospital at 4:30 p.m. to sign in from lunch and out from work. Garriga credibly testified that not taking a lunch and signing out early or taking lunch at the end of the day would have to be approved by a supervisor, and it only stands to reason that Beatty would not be permitted to take her lunch and leave for the day at 3:30 p.m. without approval because she is the only driver on shift after 3:30 p.m. Beatty's testimony that she had spoken to Garriga and obtained permission to leave early or take her lunches at the end of the day was not credible and was overborne by Garriga's credible testimony to the contrary.

**I FIND** the following **FACTS** with respect to these incidents:

The County Handbook reflects under Attendance & Punctuality: Employees must sign their own time sheets or punch their own time cards upon arrival to and departure from work. Employees who falsify time records or who sign a time sheet or punch a time card for another employee are subject to discipline, including immediate termination. (C-15.) Beatty did not speak to Garriga or obtain permission to leave early, or to skip lunch and leave early on any of the dates not noted as approved.

January 27, 2017, Uniform Incident

Charge:

On January 27, 2017, Beatty reported to work not wearing the County provided uniform. This constitutes violation of MPH Policy HR-010, neglect of duty, and insubordination.

Notwithstanding Beatty's alleged issue with the uniform pants, Garriga testified, consistent with his January 27, 2017, email to Reilly, that contrary to Meadowview policy, Beatty had reported to work without a uniform identifying her as a County employee.

**I FIND** the following **FACTS** with respect to this incident:

The Meadowview Dress Code policy states: all uniforms worn by Hospital staff must be clean and in good repair, and other County staff, vendors, or students who wear a uniform or lab coat should follow their Departmental guidelines. The County Handbook Dress Code reflects:

Employees should present themselves in a neat, orderly, business-like manner and dress appropriately for the work performed. Employees assigned to offices must dress in appropriate business attire. Uniforms must be worn by employees when required.

The drivers have a uniform consisting of a light-blue shirt, dark-blue pants, and a jacket. The shirt and jacket have the County emblem on them, but the pants do not. On January 27, 2017, Beatty reported to work not wearing a uniform or any article of clothing identifying her as a County employee.

February 21, 2017, Assignment-Refusal Incident

Charge:

On February 21, 2017, Beatty refused an assignment to pick up a patient in Hoboken at 3:00 P.M. As such, a social service aid[e] was sent on the run with the hospital Jeep. Beatty again left for the day at 4:00 P.M. without approval to leave early. This constitutes neglect of duty and insubordination.

If the trip was being assigned to Beatty at 3:00 p.m., it is evident that she was not on a trip and therefore could have taken her lunch prior. Further, her testimony that she had advised Garriga that she had not taken her lunch was not credible, as she then could have taken her lunch from 3:00 p.m. until 4:00 p.m. or 3:30 p.m. until 4:30 p.m., but did not. Further supporting that her testimony was not credible is that she left at 4:00 p.m. If she had not taken a lunch as she testified and finished her meeting about the trip at 3:30 p.m. as she testified, then she would have left at 3:30 p.m. for an hour lunch, but instead left at 4:00 p.m. Had Beatty left at 4:30 p.m., her testimony about not working overtime may have been more plausible. Additionally, 3:00 p.m. was not rush hour, and given the geographic proximity between Secaucus and Hoboken, Beatty should have had more

than sufficient time to return by 4:30 p.m. Given that she signed out at 4:00 p.m., it appears that she intended to leave early and therefore refused the trip.

I **FIND** the following **FACTS** with respect to this incident:

Beatty left work early without approval from Garriga. Beatty refused to make a trip to Hoboken to pick up a patient, requiring that the hospital send an aide without a commercial driver license in an SUV to make the trip.

### **LEGAL ANALYSIS AND CONCLUSIONS**

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the executive branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career-service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career-service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline includes removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a), including incompetency, inefficiency or failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, misuse of public property, and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(1), (2), (6), (7), (8), and (12).

In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Beatty was suspended for ninety working days for insubordination, conduct unbecoming a public employee, neglect of duty, misuse of public property, and

other sufficient cause. The burden of proof is on the County to prove the charges by a preponderance of the credible evidence.

N.J.A.C. 4A:2-2.3(a)(2) does not define insubordination. Black's Law Dictionary 919 (10th ed. 2014) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Likewise, N.J.A.C. 4A:2-2.3(a)(6) does not define conduct unbecoming. However, the Appellate Division has held that conduct unbecoming a public employee is "any conduct . . . which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." What constitutes conduct unbecoming a public employee is primarily a question of law. Karins v. Atl. City, 152 N.J. 532, 553 (1998).

An employee may be subject to discipline for misuse of public property. Beatty utilized the Meadowview van on a solo personal trip to Walmart. Accordingly, I **CONCLUDE** that Beatty's use of the van for a personal trip was a misuse of public property, conduct unbecoming a public employee, and a violation of the standards of conduct in the County Handbook.

Beatty's supervisor provided her with a copy of her job description and advised that it was Beatty's responsibility to remove snow from the van. Snow-removal tools were available to Beatty, but she failed and refused to remove the snow from the van. Accordingly, I **CONCLUDE** that Beatty was insubordinate and neglected her duty.

With respect to the microwave, the testimony at the hearing did not entirely corroborate the charges. Thus, while entirely possible that Beatty was advised by her supervisor that the microwave was removed from the transportation office at his direction, and contrary to his decision she moved it back, I **CONCLUDE** that the evidence adduced at the hearing falls short of establishing insubordination. With respect to the January 19, 2017, trip, while there is little doubt that Beatty likely had a bad attitude about having to make the trip, she did not refuse to make the trip, and I **CONCLUDE** that the evidence



adduced at the hearing fell short of establishing that she had been insubordinate or neglected her duty.

It was evident that Beatty was signing in and out for lunch and out of work at the same time, essentially leaving work an hour early. While she is entitled to a lunch hour, she is the only driver on duty after 3:30 p.m., and taking her lunch and leaving for the day required approval that she did not obtain. Thus, I **CONCLUDE** that Beatty's taking lunch at the end of the day and/or leaving work early, without approval, constitutes neglect of duty. Further, Beatty left work at 2:30 p.m. on February 3, 2017. The timesheet reflects that she took lunch from 2:30 p.m. to 3:30 p.m., thus she left work an hour early without approval. Likewise, on February 21, 2017, Beatty left work half an hour early, and her assertion that it was because she did not take lunch that day was unsupported by the evidence. Thus, there were occasions on which she simply left work early and failed to work her full shift, which I **CONCLUDE** constitute neglect of duty and conduct unbecoming a public employee.

On January 27, 2017, Beatty reported to work not in uniform as required, which I **CONCLUDE** was a violation of Meadowview policy and constituted neglect of duty and insubordination.

On February 21, 2017, Beatty left work early without approval and failed to work her full shift. Accordingly, I **CONCLUDE** that this constituted neglect of duty and conduct unbecoming a public employee. Additionally, I **CONCLUDE** that her refusal to make the trip to Hoboken constituted insubordination, neglect of duty, and conduct unbecoming a public employee.

As more specifically set forth above, I **CONCLUDE** that the charges of neglect of duty, insubordination, conduct unbecoming a public employee, misuse of public property, and other sufficient cause are sustained. The penalty imposed by the County was a ninety-working-day suspension. The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission must utilize the evaluation process set forth in West New York v. Bock, 38

N.J. 500 (1962), and consider the employee's reasonably recent history of promotions, commendations, and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated.

In view of Beatty's numerous instances of misconduct, as well as her disciplinary history, most recently a twenty-day suspension, I **CONCLUDE** that a sixty-working-day suspension is an appropriate penalty in this matter.

### **ORDER**

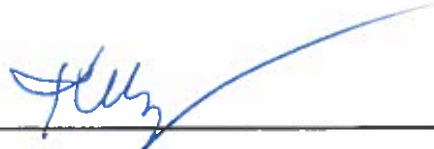
I **ORDER** that the charges of neglect of duty, insubordination, conduct unbecoming a public employee, misuse of public property, and other sufficient cause are sustained. I further **ORDER** that the penalty of a ninety-working-day suspension is **MODIFIED** to sixty working days, and that Beatty be awarded back pay in accordance with the guidelines set forth in N.J.A.C. 4A:2-2.10 if she has already served any period of the suspension.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 24, 2018  
DATE

  
KELLY J. KIRK, ALJ

Date Received at Agency: August 24, 2018

Date Mailed to Parties:  
mm

**APPENDIX**

**WITNESSES**

**For Appellant:**

Fatima Beatty

**For Respondent:**

Walt Boraczek

Patricia McCarthy

Noel Garriga

**EXHIBITS IN EVIDENCE**

**Joint:**

J-1 FNDA (without attachments)

**For Appellant:**

None

**For Respondent:**

- C-1 PNDA
- C-2 Email, dated January 5, 2017
- C-3 Email, dated December 28, 2016
- C-4 Standards of Conduct Excerpt
- C-5 Email, dated January 9, 2017
- C-6 Job Specification—Omnibus Operator
- C-7 (Not in evidence)
- C-8 (Not in evidence)
- C-9 Email, dated January 19, 2017
- C-10 Email, dated January 20, 2017

- C-11 Written Statement of Patricia McCarthy, dated February 7, 2017
- C-12 Bi-Weekly Attendance sheet (01/21/2017–02/03/17)
- C-13 Email, dated January 23, 2017
- C-14 Bi-Weekly Attendance sheet (02/18/2017–03/03/17)
- C-15 Handbook Excerpt
- C-16 Email, dated January 27, 2017
- C-17 Dress Code Policy
- C-18 Email, dated February 21, 2017
- C-19 (Not in evidence)
- C-20 Employee Profile
- C-21 Video (DVD)